

THIRTY-NINTH DAY - MARCH 9, 2004**LEGISLATIVE JOURNAL****NINETY-EIGHTH LEGISLATURE
SECOND SESSION****THIRTY-NINTH DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, March 9, 2004

PRAYER

The prayer was offered by Senator Combs.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senator Brashear who was excused; and Senators Aguilar, Bromm, Brown, Foley, Landis, Maxwell, Mossey, D. Pederson, and Schrock who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the thirty-eighth day was approved.

MOTIONS - Approve Appointments

Senator Schimek moved the adoption of the Government, Military and Veterans Affairs Committee report for the confirmation of the following appointments found on page 903:

State Emergency Response Commission
Christine Bleich
Richard Christensen
Steven Wood

Voting in the affirmative, 25:

Baker	Connealy	Friend	Kremer	Redfield
Bourne	Cudaback	Hartnett	Mines	Smith
Burling	Cunningham	Janssen	Preister	Stuthman
Byars	Engel	Johnson	Price	Vrtiska
Combs	Erdman	Jones	Quandahl	Wehrbein

Voting in the negative, 0.

Present and not voting, 14:

Beutler	Jensen	McDonald	Schimek	Thompson
Chambers	Kruse	Pedersen, Dw.	Stuhr	Tyson
Hudkins	Louden	Raikes	Synowiecki	

Excused and not voting, 10:

Aguilar	Bromm	Foley	Maxwell	Pederson, D.
Brashear	Brown	Landis	Mossey	Schrock

The appointments were confirmed with 25 ayes, 0 nays, 14 present and not voting, and 10 excused and not voting.

Senator Schimek moved the adoption of the Government, Military and Veterans Affairs Committee report for the confirmation of the following appointments found on page 902:

Accountability and Disclosure Commission

Marilee A. Fredrickson

Andre R. Barry

Gary Rosacker

Voting in the affirmative, 25:

Aguilar	Erdman	Kruse	Quandahl	Stuhr
Baker	Friend	Maxwell	Raikes	Stuthman
Bourne	Hartnett	Mines	Redfield	Synowiecki
Cudaback	Janssen	Preister	Schimek	Vrtiska
Engel	Kremer	Price	Smith	Wehrbein

Voting in the negative, 0.

Present and not voting, 15:

Beutler	Combs	Hudkins	Jones	Pedersen, Dw.
Byars	Connealy	Jensen	Louden	Schrock
Chambers	Cunningham	Johnson	McDonald	Thompson

Excused and not voting, 9:

Brashear	Brown	Foley	Mossey	Tyson
Bromm	Burling	Landis	Pederson, D.	

The appointments were confirmed with 25 ayes, 0 nays, 15 present and not voting, and 9 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 906. Senator Stuhr renewed her pending

amendment, AM2972, found on page 932, to the Stuhr et al. pending amendment, AM2963, printed separately and referred to on page 931.

The Stuhr amendment was adopted with 28 ayes, 0 nays, 13 present and not voting, and 8 excused and not voting.

Senator Chambers renewed his pending amendment, FA1551, found on page 934, to the Stuhr et al. pending amendment.

The Chambers amendment was adopted with 27 ayes, 0 nays, 14 present and not voting, and 8 excused and not voting.

Senator Chambers offered the following amendment to the Stuhr et al. pending amendment:

FA1552

Amend AM2963

P. 13, in line 8 strike "completion of education."

Senator Chambers withdrew his amendment.

Senator Stuhr offered the following amendment to the Stuhr et al. pending amendment:

FA1553

Amend AM2963

On Page 13 Line 7 – Strike "equivalent education" and insert "GED"

Strike Lines 8-20 and insert (d) Has submitted evidence of training or experience prescribed or approved by the board to ensure the protection of the public in performing the practices of body art for which the applicant is seeking licensure. (e) Has successfully completed an examination prescribed or approved by the board to test the applicant's knowledge of safety, sanitation, and sterilization techniques and infection control practices and requirements, except that the department may waive all or a portion of the examination for persons engaged in the practice of body art prior to April 1, 2005, upon submission of evidence satisfactory to the department.

The Stuhr amendment was adopted with 25 ayes, 0 nays, 19 present and not voting, and 5 excused and not voting.

The Stuhr et al. pending amendment, AM2963, as amended, was renewed.

The Stuhr et al. amendment, as amended, was adopted with 27 ayes, 0 nays, 17 present and not voting, and 5 excused and not voting.

Senator Jensen renewed the Jensen et al. pending amendment, AM2724, printed separately and referred to on page 715.

Senator Jensen withdrew the Jensen et al. amendment.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 906A. Advanced to E & R for engrossment.

LEGISLATIVE BILL 969. E & R amendment, AM7171, printed separately and referred to on page 591, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 841. Senator Byars withdrew his pending amendments, AM2672 and AM2813, found on pages 728 and 787.

Senator Byars renewed his pending amendment, AM2965, found on page 932.

Senator Byars withdrew his amendment.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 986. E & R amendment, AM7172, found on page 591, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 986A. Advanced to E & R for engrossment.

LEGISLATIVE BILL 963. E & R amendment, AM7174, found on page 704, was adopted.

Senator Vrtiska renewed his pending amendment, AM2717, found on page 704.

The Vrtiska amendment was adopted with 25 ayes, 0 nays, 21 present and not voting, and 3 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 999. E & R amendment, AM7175, found on page 756, was adopted.

Senator Beutler withdrew the Beutler-Quandahl pending amendment, FA1471, found on page 664.

Senator Quandahl renewed his pending amendment, AM2778, found on page 792.

The Quandahl amendment was adopted with 26 ayes, 0 nays, 19 present and not voting, and 4 excused and not voting.

Senator Quandahl withdrew his pending amendment, AM2933, found on page 905.

Senator Beutler withdrew his pending amendment, AM2899, found on page 905.

Senator Beutler renewed his pending amendment, AM2959, found on page 928.

The Beutler amendment was adopted with 28 ayes, 0 nays, 17 present and not voting, and 4 excused and not voting.

Senator Bourne offered the following amendment:
AM2839

- 1 1. Insert the following new section:
- 2 "Sec. 21. Section 9-701, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 9-701. (1) For purposes of this section:
- 5 (a) Gift enterprise ~~shall mean~~ means a contest, game of
- 6 chance, or game promotion which is conducted within the state or
- 7 throughout the state and other states in connection with the sale
- 8 of consumer or trade products or services solely as business
- 9 promotions and in which the elements of chance and prize are
- 10 present. Gift enterprise ~~shall~~ does not include any scheme using
- 11 the game of bingo or keno; any non-telecommunication-related,
- 12 player-activated electronic or electromechanical facsimile of any
- 13 game of chance; or any slot machine of any kind. A gift enterprise
- 14 shall not utilize pickle cards as defined in section 9-315.
- 15 Promotional game tickets may be utilized subject to the following:
- 16 (i) The tickets utilized shall be manufactured or
- 17 imprinted with the name of the operator on each ticket;
- 18 (ii) The tickets utilized shall not be manufactured with
- 19 a cost per play printed on them; and
- 20 (iii) The tickets utilized shall not be substantially
- 21 similar to any type of pickle card approved by the Department of
- 22 Revenue pursuant to section 9-332.01; and
- 23 (b) Operator ~~shall mean~~ means any person, firm,
- 24 corporation, association, governmental entity, or agent or employee
- 1 thereof who promotes, operates, or conducts a gift enterprise.
- 2 Operator ~~shall~~ does not include any nonprofit organization or any
- 3 agent or employee thereof, except that operator includes any credit
- 4 union chartered under state or federal law or any agent or employee
- 5 thereof who promotes, operates, or conducts a gift enterprise.
- 6 (2) Any operator may conduct a gift enterprise within
- 7 this state in accordance with this section.
- 8 (3) An operator shall not:
- 9 (a) Design, engage in, promote, or conduct a gift
- 10 enterprise in connection with the promotion or sale of consumer
- 11 products or services in which the winner may be unfairly

12 predetermined or the game may be manipulated or rigged;
13 (b) Arbitrarily remove, disqualify, disallow, or reject
14 any entry;
15 (c) Fail to award prizes offered;
16 (d) Print, publish, or circulate literature or
17 advertising material used in connection with such gift enterprise
18 which is false, deceptive, or misleading; or
19 (e) Require an entry fee, a payment or promise of payment
20 of any valuable consideration, or any other consideration as a
21 condition of entering a gift enterprise or winning a prize from the
22 gift enterprise, except that a contest, game of chance, or business
23 promotion may require, as a condition of participation, evidence of
24 the purchase of a product or service as long as the purchase price
25 charged for such product or service is not greater than it would
26 have been without the contest, game of chance, or business
27 promotion. For purposes of this section, consideration shall not
1 include (i) filling out an entry blank, (ii) entering by mail with
2 the purchase of postage at a cost no greater than the cost of
3 postage for a first-class letter weighing one ounce or less, or
4 (iii) entering by a telephone call to the operator of or for the
5 gift enterprise at a cost no greater than the cost of postage for a
6 first-class letter weighing one ounce or less. When the only
7 method of entry is by telephone, the cost to the entrant of the
8 telephone call shall not exceed the cost of postage for a
9 first-class letter weighing one ounce or less for any reason,
10 including (A) whether any communication occurred during the call
11 which was not related to the gift enterprise or (B) the fact that
12 the cost of the call to the operator was greater than the cost to
13 the entrant allowed under this section.
14 (4)(a) The Department of Revenue may adopt and promulgate
15 rules and regulations necessary to carry out the operation of gift
16 enterprises.
17 (b) Whenever the department has reason to believe that a
18 gift enterprise is being operated in violation of this section or
19 the department's rules and regulations, it may bring an action in
20 the district court of Lancaster County in the name of and on behalf
21 of the people of the State of Nebraska against the operator of the
22 gift enterprise to enjoin the continued operation of such gift
23 enterprise anywhere in the state.
24 (5)(a) Any person, firm, corporation, association, or
25 agent or employee thereof who engages in any unlawful acts or
26 practices pursuant to this section or violates any of the rules and
27 regulations promulgated pursuant to this section shall be guilty of
1 a Class II misdemeanor.
2 (b) Any person, firm, corporation, association, or agent
3 or employee thereof who violates any provision of this section or
4 any of the rules and regulations promulgated pursuant to this
5 section shall be liable to pay a civil penalty of not more than one
6 thousand dollars imposed by the district court of Lancaster County

7 for each such violation which shall accrue to the permanent school
8 fund. Each day of continued violation shall constitute a separate
9 offense or violation for purposes of this section.

10 (6) In all proceedings initiated in any court or
11 otherwise under this section, the Attorney General or appropriate
12 county attorney shall prosecute and defend all such proceedings.

13 (7) This section shall not apply to any activity
14 authorized and regulated under the Nebraska Bingo Act, the Nebraska
15 County and City Lottery Act, the Nebraska Lottery and Raffle Act,
16 the Nebraska Pickle Card Lottery Act, or the Nebraska Small Lottery
17 and Raffle Act."

18 2. Renumber the remaining sections and correct internal
19 references accordingly.

20 3. Correct the operative date and repealer sections so
21 that the section added by this amendment becomes operative three
22 calendar months after adjournment of this legislative session.

The Bourne amendment was adopted with 27 ayes, 1 nay, 17 present and not voting, and 4 excused and not voting.

Senator Chambers offered the following amendment:

FA1554

Add a new section: "Any death sentence which is carried out pursuant to law, shall be carried out in the lobby of the largest bank in the state."

Pending.

RESOLUTION

LEGISLATIVE RESOLUTION 252. Introduced by Combs, 32.

WHEREAS, the Exeter-Milligan girls' basketball team is the champion of the 2004 Class D-1 Girls' State Basketball Tournament; and

WHEREAS, the 57-46 win over the talented Elm Creek team in the final game capped the Lady Timberwolves' Girls Class D-1 State Basketball Championship; and

WHEREAS, the Lady Timberwolves' 28-0 season equaled the best win-loss record in the history of Nebraska girls' basketball; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state which is the result of not only the individual team members' performance and coaching excellence, but also the support of teachers, administrators, and parents.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature recognizes and congratulates the Exeter-Milligan Lady Timberwolves' basketball team and its coaches, parents, and supporters.

2. That a copy of this resolution be sent to the Exeter-Milligan Lady

Timberwolves' basketball team head coach Jason Arbuck.

Laid over.

NOTICE OF COMMITTEE HEARING
Natural Resources
Room 1525

Friday, April 2, 2004

8:45 a.m.

Robert Krohn - Nebraska Environmental Trust Board

(Signed) Ed Schrock, Chairperson

AMENDMENT - Print in Journal

Senator Schrock filed the following amendment to LB 962:

(Amendment, AM2984, is printed separately and available in the Bill Room, Room 1104.)

VISITORS

Visitors to the Chamber were 36 students and teacher from North Bend Elementary School; home school students and leader from Norfolk; 16 fourth- through eighth-grade students, teacher, and sponsors from R-7 School; Lois Maly, Clara Karpisek, Rose Morton, Mary Hart, and Joyce Drozda from Lincoln; and Andrew Spader from Waco and Charlotte Luethje from Roca.

RECESS

At 11:45 a.m., on a motion by Senator Preister, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., Senator Cudaback presiding.

ROLL CALL

The roll was called and all members were present except Senator Brashear who was excused; and Senators Bromm, Engel, Erdman, Preister, and Price who were excused until they arrive.

SELECT COMMITTEE REPORTS
Enrollment and Review

Correctly Engrossed

The following bills were correctly engrossed: LBs 75, 560, and 560A.

ER9096

Enrollment and Review Change to LB 560

The following changes, required to be reported for publication in the Journal, have been made:

1. In the Baker amendment, AM2589, sections 48 and 49 have been renumbered as sections 42 and 43, respectively.

2. In the Baker amendment, AM2490:

a. Sections 41, 42, 44, 47, 49, and 51 have been renumbered as sections 35, 36, 38, 41, 45, and 47, respectively;

b. On page 12, line 12, "2002" has been struck and "2003" inserted; and

c. On page 15, line 15, "48, and 51" and all amendments thereto have been struck and "44, and 47" inserted.

3. On page 1, the matter beginning with "sections" in line 2 through line 16 has been struck and "sections 37-1201, 60-6,324, 60-1805, and 81-8,219, Reissue Revised Statutes of Nebraska, sections 13-910, 30-24,125, 37-1291, 60-108, 60-110, 60-111.01, 60-129, 60-302.05, 60-308, 60-311.01, 60-484.02, 60-1901, 60-1904, and 60-1907, Revised Statutes Supplement, 2002, and sections 60-106, 60-139, 60-301, 60-311.02, 60-364, 60-462.01, and 60-483, Revised Statutes Supplement, 2003; to provide for transfer of certificates of title in certain decedents' estates; to provide for salvage and nontransferable certificates of title for motorboats; to provide for disposition of abandoned motorboats; to change provisions relating to the State Boat Act, assembled all-terrain vehicle and minibike certificates of title, motor vehicle certificates of title and registration, salvage branded certificates of title, and registration of snowmobiles and camper units; to redefine terms; to change fees for motor vehicle record requests; to adopt updated federal regulations; to provide for the release of certain driver's license information; to provide powers and duties related to abandoned all-terrain vehicles and minibikes; to provide penalties; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency." inserted.

(Signed) Ray Mossey, Chairperson

GENERAL FILE

LEGISLATIVE BILL 888. Title read. Considered.

The Standing Committee amendment, AM2429, found on page 531, was considered.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1535

Amend AM2429

Strike lines 1 and 14.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Standing Committee amendment:

FA1536

Amend AM2429

In line 10 strike "Once" and insert "After".

The Chambers amendment was adopted with 28 ayes, 0 nays, 17 present and not voting, and 4 excused and not voting.

The Standing Committee amendment, as amended, was adopted with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

Senator Chambers offered the following amendment:

FA1537

On page 5, in line 4 strike "Nebraska" and "the"; in line 14 strike "leaving the state to pay for imported".

Senator Chambers asked unanimous consent to withdraw his pending amendment, FA1537, found in this day's Journal, and replace it with his substitute amendment, FA1555. No objections. So ordered.

FA1555

On page 5, in line 4 strike "Nebraska" and "the"; in line 14 strike "leaving the state to pay for imported" and insert "expended to import".

The Chambers amendment was adopted with 28 ayes, 0 nays, 17 present and not voting, and 4 excused and not voting.

Senator Chambers offered the following amendment:

FA1538

On page 5, in line 7 before "to" insert "(a)"; in line 9 before "to" insert "(b)"; in line 10 before "to" insert "(c)"; in line 11 before "to" insert "(d)"; in line 12 insert "(e)"; in line 13 before second "to" insert "(f)"; in line 15 before first "to" insert "(g)" and before second "to" insert "(h)"; in line 16 before "to" insert "(i)".

The Chambers amendment was adopted with 25 ayes, 0 nays, 21 present and not voting, and 3 excused and not voting.

Senator Chambers offered the following amendment:

FA1539

On page 5, in lines 23, 24 and 28; on page 6, in lines 3, 12, 15, 21 and 26; on page 7, in line 6 strike and show as stricken "shall mean" and insert "means"; on page 7, in line 4 strike "shall mean" and insert "means".

The Chambers amendment was adopted with 25 ayes, 0 nays, 21 present and not voting, and 3 excused and not voting.

Senator Chambers offered the following amendment:

FA1540

On page 7, in line 5 strike and show as stricken "and"; in line 8 strike the period and insert " and"; after line 8 insert "(11) Equivalent or equivalent code means standards that meet or exceed the requirements of the Nebraska Energy Code."

The Chambers amendment was adopted with 27 ayes, 0 nays, 20 present and not voting, and 2 excused and not voting.

Senator Chambers offered the following amendment:

FA1542

On page 7, in line 17 strike and show as stricken "will be considered" and insert "shall be deemed"; in line 19 strike and show as stricken "found" and insert "deemed"; on page 10, in line 28 strike and show as stricken "considered" and insert "deemed"

The Chambers amendment was adopted with 26 ayes, 0 nays, 22 present and not voting, and 1 excused and not voting.

Senator Chambers offered the following amendment:

FA1543

On page 8, in lines 1 and 2 strike and show as stricken "The" and insert "Such"; in line 9 strike and show as stricken "finds" and insert "determines".

The Chambers amendment was adopted with 29 ayes, 0 nays, 19 present and not voting, and 1 excused and not voting.

Senator Chambers offered the following amendment:

FA1544

1. On page 11, in line 1 strike and show as stricken "would" and insert "does"; in line 15 strike "that" and insert "such".

2. On page 12, in line 3 strike and show as stricken "of" and insert "to provide".

The Chambers amendment was adopted with 29 ayes, 0 nays, 19 present and not voting, and 1 excused and not voting.

Senators Landis and Hartnett offered the following amendment:

AM2957

1 1. Insert the following new sections:

2 "Section 1. Section 13-2802, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 13-2802. Whenever creation of a municipal county is
5 proposed involving a city of the metropolitan class, the
6 interjurisdictional planning commission shall include in its plan a
7 recommendation with regard to the territory within which any

8 metropolitan utilities district shall have and may exercise the
9 power of eminent domain pursuant to subsection (2) of section
10 14-2116. The plan shall further include a recommendation with
11 regard to the territory which shall be deemed to be within the
12 corporate boundary limits or extraterritorial zoning jurisdiction
13 of a municipality or a municipality dissolved by the creation of
14 the municipal county for purposes of ~~sections 57-1301 to 57-1307~~
15 the State Natural Gas Regulation Act. The question of creation of
16 the municipal county shall not be submitted to a vote under section
17 13-2810 until a law adopting the provisions required by this
18 section has been enacted.

19 Sec. 2. Section 66-1801, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 66-1801. Sections 66-1801 to 66-1857 and sections 5 to
22 10 of this act shall be known and may be cited as the State Natural
23 Gas Regulation Act.

24 Sec. 3. Section 66-1804, Reissue Revised Statutes of
1 Nebraska, is amended to read:

2 66-1804. (1) The commission shall have full power,
3 authority, and jurisdiction to regulate natural gas public
4 utilities and may do all things necessary and convenient for the
5 exercise of such power, authority, and jurisdiction. Except as
6 provided in the Nebraska Natural Gas Pipeline Safety Act of 1969,
7 and notwithstanding any other provision of law, such power,
8 authority, and jurisdiction shall extend to, but not be limited to,
9 all matters encompassed within the State Natural Gas Regulation
10 Act, ~~and sections 57-1301 to 57-1307.~~

11 (2) The State Natural Gas Regulation Act and all grants
12 of power, authority, and jurisdiction in the act made to the
13 commission shall be liberally construed, and all incidental powers
14 necessary to carry into effect the provisions of the act are
15 expressly granted to and conferred upon the commission.

16 Sec. 4. Section 66-1852, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 66-1852. (1) Except as provided in sections 5 to 10 of
19 this act, ~~57-1301 to 57-1307 as those statutes govern~~
20 ~~jurisdictional utilities and metropolitan utilities districts~~, no
21 person, public or private, shall extend duplicative or redundant
22 natural gas mains or other natural gas services into any area which
23 has existing natural gas utility infrastructure or where a contract
24 has been entered into for the placement of natural gas utility
25 infrastructure.

26 (2) This section shall not apply in any area in which two
27 or more jurisdictional utilities share authority to provide natural
1 gas within the same territory under franchises issued by the same
2 city.

3 Sec. 5. (1) Except as provided in subsection (2) of this
4 section, the initial boundaries of the exclusive service areas of
5 jurisdictional utilities, cities, and metropolitan utilities

6 districts shall extend to any location at which any jurisdictional
7 utility, city, and metropolitan utilities district was providing
8 natural gas service to customers on January 1, 2004.

9 (2) Where two or more jurisdictional utilities are
10 providing natural gas service to customers within the same area
11 pursuant to franchise agreements with the same city, such
12 jurisdictional utilities shall share service territories in such
13 city.

14 Sec. 6. Except as provided in sections 8 and 9 of this
15 act, the formal boundaries of the exclusive service areas of
16 jurisdictional utilities, cities, or metropolitan utilities
17 districts shall be established by the commission upon the following
18 basis:

19 (1) For any city owning, maintaining, and operating a
20 natural gas distribution system, the exclusive service area for the
21 city shall be its initial service area boundaries and all the
22 territory within the corporate boundaries of the city and its
23 extraterritorial zoning jurisdiction as established by its
24 governing body pursuant to state law as such extraterritorial
25 zoning jurisdiction existed on January 1, 2004, and as such
26 jurisdiction may be extended on such basis from time to time, when
27 the city formally expresses its intention to provide natural gas
1 service and evidences such intent;

2 (2) For any metropolitan utilities district, the
3 exclusive service area for the district shall be all the territory
4 within the initial service area boundaries of the district and all
5 the territory where the district provides natural gas service
6 within the entire corporate boundaries of any city and shall extend
7 to the extraterritorial zoning jurisdiction of any such city as
8 established by its governing body pursuant to state law as such
9 extraterritorial zoning jurisdiction existed on January 1, 2004,
10 and as such jurisdiction may be extended on such basis from time to
11 time; and

12 (3) For any jurisdictional utility, the exclusive service
13 area for the utility shall be the initial service area boundaries
14 of the area within which the utility provided natural gas service
15 on January 1, 2004, and any area into which it has extended such
16 service subsequent to such date as authorized or recognized by the
17 commission.

18 Sec. 7. (1) Within ninety days following the operative
19 date of this section, each jurisdictional utility, city, and
20 metropolitan utilities district shall file with the commission a
21 detailed map or maps of its exclusive service area as it exists on
22 January 1, 2004, drawn to a scale of not less than one inch per
23 mile or drawn to a larger scale, if required for clarity, showing
24 the location of its natural gas pipelines and related facilities as
25 of January 1, 2004. The commission may require that such maps be
26 updated as often as the commission deems reasonably necessary to
27 carry out its responsibilities under the State Natural Gas

1 Regulation Act.

2 (2) The commission shall prepare or cause to be prepared
3 a composite map of this state showing the exclusive service areas
4 of jurisdictional utilities, cities, and metropolitan utilities
5 districts as submitted by such entities pursuant to this section.

6 (3) The form and detail of all maps shall be determined
7 by the commission.

8 Sec. 8. (1) The initial exclusive service area
9 boundaries for each jurisdictional utility, city, or metropolitan
10 utilities district shall be shown by the maps filed in accordance
11 with section 7 of this act. After notice and hearing provided to
12 the affected jurisdictional utilities, cities, or metropolitan
13 utilities districts, the commission by order shall thereafter
14 modify those boundaries where necessary to recognize changed
15 situations and circumstances as set forth in the State Natural Gas
16 Regulation Act as they arise or have arisen since January 1, 2004.

17 (2) When an exclusive service area is modified by the
18 commission to transfer areas including then existing customers then
19 served by the facilities of another jurisdictional utility, city,
20 or metropolitan utilities district, unless a voluntary exchange of
21 facilities is agreed upon by the parties involved and approved by
22 the commission, the commission shall require the transfer of the
23 facilities presently serving these customers, subject to any other
24 relevant provisions of law.

25 (3) Contracts between jurisdictional utilities, cities,
26 or metropolitan utilities districts to designate exclusive service
27 areas and customers to be served by any of those entities or for
1 the exchange of customers between these entities, when approved by
2 the commission, shall be valid and enforceable and shall be
3 incorporated into the appropriate exclusive service areas
4 established pursuant to subsection (1) of this section. The
5 commission shall approve a contract if it finds that the contract
6 will eliminate or avoid unnecessary duplication of facilities, will
7 provide adequate natural gas service to all areas and customers
8 affected, will promote the efficient and economical use and
9 development of the natural gas systems of the contracting natural
10 gas utilities, and is in the public interest.

11 (4) Except in accordance with the provisions of a
12 customer choice program or other unbundling program approved by the
13 commission or as otherwise permitted in the State Natural Gas
14 Regulation Act, a jurisdictional utility, city, or metropolitan
15 utilities district shall not serve or offer to serve natural gas
16 customers in an exclusive service area assigned to another natural
17 gas utility and a jurisdictional utility, city, or metropolitan
18 utilities district shall not construct facilities to serve natural
19 gas customers in an exclusive service area assigned to another such
20 jurisdictional utility, city, or metropolitan utilities district.
21 The state, a jurisdictional utility, or any other person who is
22 injured or threatened with injury by conduct prohibited by this

23 section may initiate a contested case proceeding with the
24 commission. Upon finding a violation of this section, the
25 commission shall order appropriate corrective action, including
26 discontinuance of the unlawful service to natural gas customers,
27 removal of the unlawful facilities, and any combination of such
1 remedies, or any other disposition the commission deems just and
2 reasonable.

3 Sec. 9. Following the establishment of exclusive service
4 areas pursuant to section 7 of this act, a jurisdictional utility,
5 city, or metropolitan utilities district shall not construct or
6 extend facilities into any area not presently within the exclusive
7 service area of a jurisdictional utility, city, or metropolitan
8 utilities district, or furnish natural gas service to a prospective
9 customer not then being served by a jurisdictional utility, city,
10 or metropolitan utilities district, except upon application to the
11 commission for a modification of its existing exclusive service
12 area. The commission shall, following a hearing on the matter,
13 determine whether it is in the public interest for the applying
14 jurisdictional utility, city, or metropolitan utilities district or
15 another such utility, city, or district to serve the area and in
16 doing so, the commission shall be guided by a balance of the
17 following factors:

18 (1) The expressed preferences of residents or landowners
19 in the area regarding their choice for a natural gas service
20 provider;

21 (2) The proximity of then existing natural gas mains to
22 the area, including the length of time such lines have been in
23 existence;

24 (3) The orderly development of natural gas utility
25 infrastructure as a whole;

26 (4) The impact of granting the application on then
27 existing and future ratepayers of natural gas utilities;

1 (5) The economic feasibility of service by the utility to
2 projected customers within the area;

3 (6) The elimination and prevention of duplicative or
4 redundant natural gas mains and facilities supplying the area;

5 (7) The willingness and good faith intent of the natural
6 gas utility to provide adequate and dependable service in the area
7 to be assigned; and

8 (8) Whether the customers in the area have the right to
9 vote for the natural gas rate and service quality regulator for the
10 area.

11 Sec. 10. A jurisdictional utility, city, or metropolitan
12 utilities district shall furnish retail service, upon application,
13 to any person within its exclusive service area if it is
14 economically feasible to service and supply the person. The
15 natural gas service shall be furnished by the jurisdictional
16 utility, city, or metropolitan utilities district within a
17 reasonable time after application is made.

18 Sec. 14. Section 75-109.01, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 75-109.01. Except as otherwise specifically provided by
21 law, the Public Service Commission shall have jurisdiction, as
22 prescribed, over the following subjects:

23 (1) Common carriers, generally, pursuant to sections
24 75-101 to 75-158;

25 (2) Grain pursuant to the Grain Dealer Act and the Grain
26 Warehouse Act and sections 89-1,104 to 89-1,108;

27 (3) Manufactured homes and recreational vehicles pursuant
1 to the Uniform Standard Code for Manufactured Homes and
2 Recreational Vehicles;

3 (4) Modular housing units pursuant to the Nebraska
4 Uniform Standards for Modular Housing Units Act;

5 (5) Motor carrier registration and safety pursuant to
6 sections 75-301 to 75-322, 75-369.03, 75-370, 75-371, 75-383, and
7 75-384;

8 (6) Pipeline carriers and rights-of-way pursuant to the
9 State Natural Gas Regulation Act and sections ~~57-1301 to 57-1307~~
10 ~~and~~ 75-501 to 75-503;

11 (7) Railroad carrier safety pursuant to sections 74-918,
12 74-919, 74-1323, and 75-401 to 75-430;

13 (8) Telecommunications carriers pursuant to the Automatic
14 Dialing-Announcing Devices Act, the Emergency Telephone
15 Communications Systems Act, the Enhanced Wireless 911 Services Act,
16 the Intrastate Pay-Per-Call Regulation Act, the Nebraska
17 Telecommunications Regulation Act, the Nebraska Telecommunications
18 Universal Service Fund Act, the Telecommunications Relay System
19 Act, the Telephone Consumer Slamming Prevention Act, and sections
20 86-574 to 86-580;

21 (9) Transmission lines and rights-of-way pursuant to
22 sections 70-301 and 75-702 to 75-724;

23 (10) Water service pursuant to the Water Service
24 Regulation Act; and

25 (11) Jurisdictional utilities governed by the State
26 Natural Gas Regulation Act. If the provisions of Chapter 75 are
27 inconsistent with the provisions of the State Natural Gas
1 Regulation Act, the provisions of the State Natural Gas Regulation
2 Act control.

3 Sec. 30. The following sections are outright repealed:
4 Sections 57-1301 to 57-1307, Revised Statutes Supplement, 2002.".

5 2. Renumber the remaining sections and correct internal
6 references accordingly and correct the operative date and the
7 repealer so that the sections added by this amendment become
8 operative three calendar months after the adjournment of this
9 legislative session.

Senator Landis withdrew the Landis-Hartnett amendment.

Advanced to E & R for review with 26 ayes, 0 nays, 20 present and not voting, and 3 excused and not voting.

SELECT COMMITTEE REPORT
Enrollment and Review

LEGISLATIVE RESOLUTION 209CA. Placed on Select File as amended.

E & R amendment to LR 209CA:

AM7183

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:
3 "Section 1. At the general election in November 2004 the
4 following proposed amendment to the Constitution of Nebraska shall
5 be submitted to the electors of the State of Nebraska for approval
6 or rejection:

7 To amend Article III, section 24:

8 III-24 "(1) Except as provided in this section, the
9 Legislature shall not authorize any game of chance or any lottery
10 or gift enterprise when the consideration for a chance to
11 participate involves the payment of money for the purchase of
12 property, services, or a chance or admission ticket or requires an
13 expenditure of substantial effort or time.

14 (2) The Legislature may authorize and regulate a state
15 lottery pursuant to subsection (3) of this section and other
16 lotteries, raffles, and gift enterprises which are intended solely
17 as business promotions or the proceeds of which are to be used
18 solely for charitable or community betterment purposes without
19 profit to the promoter of such lotteries, raffles, or gift
20 enterprises.

21 (3)(a) The Legislature may establish a lottery to be
22 operated and regulated by the State of Nebraska. The proceeds of
23 the lottery shall be appropriated by the Legislature for the costs
24 of establishing and maintaining the lottery and for ~~other~~ the

1 following purposes, as directed by the Legislature;

2 (i) The first five hundred thousand dollars after the
3 payment of prizes and operating expenses shall be transferred to
4 the Compulsive Gamblers Assistance Fund;

5 (ii) Forty-four and one-half percent of the money
6 remaining after the payment of prizes and operating expenses and
7 the initial transfer to the Compulsive Gamblers Assistance Fund
8 shall be transferred to the Nebraska Environmental Trust Fund to be
9 used as provided in the Nebraska Environmental Trust Act;

10 (iii) Forty-four and one-half percent of the money
11 remaining after the payment of prizes and operating expenses and
12 the initial transfer to the Compulsive Gamblers Assistance Fund
13 shall be used for education as the Legislature may direct;

14 (iv) Ten percent of the money remaining after the payment
15 of prizes and operating expenses and the initial transfer to the

16 Compulsive Gamblers Assistance Fund shall be transferred to the
17 Nebraska State Fair Board. If the Nebraska State Fair ceases
18 operations, ten percent of the money remaining after the payment of
19 prizes and operating expenses and the initial transfer to the
20 Compulsive Gamblers Assistance Fund shall be transferred to the
21 General Fund; and

22 (v) One percent of the money remaining after the payment
23 of prizes and operating expenses and the initial transfer to the
24 Compulsive Gamblers Assistance Fund shall be transferred to the
25 Compulsive Gamblers Assistance Fund.

26 (b) No lottery game shall be conducted as part of the
27 lottery unless the type of game has been approved by a majority of
1 the members of the Legislature.

2 (4) Nothing in this section shall be construed to
3 prohibit (a) the enactment of laws providing for the licensing and
4 regulation of wagering on the results of horseraces, wherever run,
5 either within or outside of the state, by the parimutuel method,
6 when such wagering is conducted by licensees within a licensed
7 racetrack enclosure or (b) the enactment of laws providing for the
8 licensing and regulation of bingo games conducted by nonprofit
9 associations which have been in existence for a period of five
10 years immediately preceding the application for license, except
11 that bingo games cannot be conducted by agents or lessees of such
12 associations on a percentage basis."

13 Sec. 2. The proposed amendment shall be submitted to the
14 electors in the manner prescribed by the Constitution of Nebraska,
15 Article XVI, section 1, with the following ballot language:

16 "A constitutional amendment to require the proceeds of
17 the lottery operated and regulated by the State of
18 Nebraska to be appropriated by the Legislature for the
19 costs of the lottery, the Nebraska Environmental Trust
20 Fund, education, the Nebraska State Fair Board, and the
21 Compulsive Gamblers Assistance Fund.

22 For
23 Against".

(Signed) Ray Mossey, Chairperson

MESSAGES FROM THE GOVERNOR

March 4, 2004

President, Speaker Bromm
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm and Senators:

Please withdraw Michael Ongerth's name from confirmation to the Nebraska Transit and Rail Advisory Council, due to his term expiration.

Thank you.

Sincerely,
(Signed) Mike Johanns
Governor

web/

March 4, 2004

President, Speaker Bromm
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm and Senators:

Contingent upon your approval, the following individual was appointed to the Nebraska Transit and Rail Advisory Council.

APPOINTEE:

*Roberto Munguia, 201 N 7th, Lincoln NE 68501

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

web/

Enclosure

*Reappointments

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

Munguia, Roberto - Nebraska Transit and Rail Advisory Council -
Transportation and Telecommunications

(Signed) Pat Engel, Chairperson
Legislative Council, Executive Board

RESOLUTION

LEGISLATIVE RESOLUTION 253. Introduced by Cunningham, 40; Jones, 43.

WHEREAS, on March 6, 2004, the Chambers girls' basketball team won the 2004 Class D-2 State Basketball Tournament championship; and

WHEREAS, the Coyotes defeated Banner County in an exciting 48-46 game to win the 2004 state championship; and

WHEREAS, this is the fifth girls' state basketball championship won by Chambers; and

WHEREAS, Coaches John and Sandy Miller and the Coyotes displayed superior sportsmanship and exemplified hard work, dedication, and discipline throughout the season; and

WHEREAS, such team achievement is made possible not only by individual members' performances and coaching guidance, but also through the support of teachers, administrators, and parents.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature recognizes and congratulates the Chambers girls' basketball team and Coaches John and Sandy Miller for their outstanding accomplishment.

2. That a copy of this resolution be sent to the Chambers girls' basketball team and head Coach John Miller.

Laid over.

AMENDMENTS - Print in Journal

Senator Jensen filed the following amendment to LB 1091:
AM2983

- 1 1. Insert the following new section:
- 2 "Sec. 4. Section 71-7608, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 71-7608. The Nebraska Tobacco Settlement Trust Fund is
- 5 created. The fund shall include any settlement payments or other
- 6 revenue received by the State of Nebraska in connection with any
- 7 tobacco-related litigation to which the State of Nebraska is a
- 8 party. The Department of Health and Human Services Finance and
- 9 Support shall remit such revenue to the State Treasurer for credit
- 10 to the fund, except that of such revenue received on or after April
- 11 1, 2004, two million five hundred thousand dollars shall be
- 12 credited annually to the Tobacco Prevention and Control Cash Fund.
- 13 Subject to the terms and conditions of such litigation, money from
- 14 the Nebraska Tobacco Settlement Trust Fund shall be transferred to
- 15 the Nebraska Health Care Cash Fund as provided in section 71-7611.
- 16 Any money in the Nebraska Tobacco Settlement Trust Fund available
- 17 for investment shall be invested by the state investment officer

18 pursuant to the Nebraska Capital Expansion Act and the Nebraska
19 State Funds Investment Act.".

20 2. On page 22, line 11, after "sections" insert

21 "71-7608,".

22 3. Renumber the remaining sections accordingly.

Senators Jensen and Byars filed the following amendment to LB 1005:
AM3011

(Amendments to Standing Committee amendments, AM2347)

1 1. Strike amendments 1 and 2 and insert the following

2 new amendments:

3 "1. Strike original sections 30 and 48 and insert the

4 following new sections:

5 'Sec. 30. Section 71-409, Reissue Revised Statutes of

6 Nebraska, is amended to read:

7 71-409. Critical access hospital means a facility (1)

8 with ~~up to fifteen~~ acute care inpatient beds where care or

9 treatment is provided on an outpatient basis or on an inpatient

10 basis to persons for an average period of not more than ninety-six

11 hours and emergency services are provided on a twenty-four-hour

12 basis and (2) which has formal agreements with at least one

13 hospital and other appropriate providers for services such as

14 patient referral and transfer, communications systems, provision of

15 emergency and nonemergency transportation, and backup medical and

16 emergency services. A facility licensed as a critical access

17 hospital as of January 1, 2004, shall have no more than twenty-five

18 acute care inpatient beds, and any other facility licensed as a

19 critical access hospital shall have no more than fifteen acute care

20 inpatient beds.

21 Sec. 48. Section 71-1914, Reissue Revised Statutes of

22 Nebraska, is amended to read:

23 71-1914. (1) The department shall be the state's

1 coordinating agency for ~~regulating~~ licensure and regulation of

2 programs in this state in order to (a) provide efficient services

3 pursuant to ~~sections 71-1908 to 71-1917~~ the Child Care Licensing

4 Act, (b) avoid duplication of services, and (c) prevent an

5 unnecessary number of inspections of any program. The department

6 may request cooperation and assistance from local and state

7 agencies and such agencies shall promptly respond. The extent of

8 an agency's cooperation may be included in the report to the

9 Legislature pursuant to section 71-1917.

10 (2) A city, village, or county may adopt rules,

11 regulations, or ordinances establishing physical well-being and

12 safety standards for ~~providers of~~ programs whether or not ~~such~~

13 ~~providers~~ the persons providing such programs are subject to

14 licensure under section 71-1911. ~~If a city, village, or county~~

15 ~~adopts any rules, regulations, or ordinances establishing physical~~

16 ~~well-being and safety standards for providers subject to licensure~~

17 ~~under section 71-1911, (a) such~~ Such rules, regulations, or

18 ordinances shall be ~~identical to~~ as stringent as or more stringent
19 than the department's rules and regulations for ~~licensed providers~~
20 ~~licensees pursuant to the Child Care Licensing Act, sections~~
21 ~~71-1908 to 71-1917, except that a city, village, or county which~~
22 ~~has rules, regulations, or ordinances in effect on July 10, 1984,~~
23 ~~which apply to programs furnished for two or three children from~~
24 ~~different families may continue to license providers of such~~
25 ~~programs, and (b) the~~ The city, village, or county adopting such
26 rules, regulations, or ordinances and the department shall
27 coordinate the inspection and supervision of licensed providers
1 licensees to avoid duplication of inspections. If the applicant is
2 an individual, the application form for providers of such programs
3 shall include the applicant's social security number. A city,
4 village, or county shall report any violation of its such rules,
5 regulations, or ordinances regulating providers subject to
6 licensure to the director, who may cause a written charge to be
7 brought pursuant to section 71-1915. The city, village, or county
8 may administer and enforce its such rules, regulations, and
9 ordinances. Enforcement of provisions of the Child Care Licensing
10 Act or rules or regulations adopted and promulgated under the act
11 establishing physical well being and safety standards for providers
12 of programs, except that the exclusive sanction for the violation
13 of any rules, regulations, and ordinances regulating providers
14 subject to licensure pursuant to section 71-1911 shall be by the
15 department pursuant to section 71-1915 sections 56 to 60 of this
16 act.

17 Sec. 82. Sections 1 to 29, 31 to 81, 84, and 85 of this
18 act become operative three calendar months after adjournment of
19 this legislative session. The other sections of this act become
20 operative on their effective date.

21 Sec. 83. Original section 71-409, Reissue Revised
22 Statutes of Nebraska, is repealed.

23 Sec. 86. Since an emergency exists, this act takes
24 effect when passed and approved according to law.'

25 2. Strike beginning with page 51, line 13, through page
26 52, line 16, and insert the following new subsection:

27 '(3) Before the foster care placement of any child in
1 Nebraska by the Department of Health and Human Services on and
2 after the effective date of this act, the department shall require
3 a national criminal history record information check of the
4 prospective foster parent of such child and each member of such
5 prospective foster parent's household who is eighteen years of age
6 or older. The department shall provide two sets of legible
7 fingerprints for such persons to the Nebraska State Patrol for
8 submission to the Federal Bureau of Investigation. The Nebraska
9 State Patrol shall conduct a criminal history record information
10 check of such persons and shall submit such fingerprints to the
11 Federal Bureau of Investigation for a national criminal history
12 record information check. The criminal history record information

13 check shall include information from federal repositories of such
 14 information and repositories of such information in other states if
 15 authorized by federal law. The Nebraska State Patrol shall issue a
 16 report of the results of such criminal history record information
 17 check to the department. The department shall pay a fee to the
 18 Nebraska State Patrol for conducting such check. Information
 19 received from the criminal history record information check
 20 required under this subsection shall be used solely for the purpose
 21 of evaluating and confirming information provided by such persons
 22 for providing foster care or for the finalization of an adoption.
 23 A child may be placed in foster care by the department prior to the
 24 completion of a criminal history record information check under
 25 this subsection in emergency situations as determined by the
 26 department.'

27 3. On page 75, strike lines 4 through 7 and insert the

1 following new subdivision:

2 '(4) Local health officer means (a) the health director
 3 of a local public health department as defined in section 71-1626
 4 or (b) the medical advisor to the board of health of a county,
 5 city, or village;'. "

6 2. Renumber the remaining amendment accordingly.

Senator Mines filed the following amendment to LB 999:
 AM2981

(Amendments to Standing Committee amendments, AM2339)

1 1. On page 10, strike lines 7 through 21, show the old
 2 matter as stricken, and insert the following new subsection:
 3 "(e)(1) The following transactions shall not be presumed
 4 to be affected by a conflict between the personal and fiduciary
 5 interests of a trustee if the transaction and any investment made
 6 pursuant to the transaction complies with the prudent investor rule
 7 set forth in sections 30-3883 to 30-3889:
 8 (A) an investment by a trustee in securities of an
 9 investment company or investment trust to which the trustee, or its
 10 affiliates, provides services in a capacity other than as trustee;
 11 or
 12 (B) the placing of securities transactions by a trustee
 13 through a securities broker that is part of the same company as the
 14 trustee, is owned by the trustee, or is affiliated with the
 15 trustee.
 16 (2) In addition to its compensation for acting as
 17 trustee, the trustee or its affiliates may be compensated for (A)
 18 any transactions made or services provided under subdivision (1)(A)
 19 of this subsection if the trustee at least annually notifies the
 20 persons entitled under section 30-3878 to receive a copy of the
 21 trustee's annual report of the rate and method by which that
 22 compensation was determined and (B) any transaction made under
 23 subdivision (1)(B) of this subsection if the transaction is
 1 executed on the most favorable terms and conditions generally

2 available considering among other things, the size of the order,
3 the trading characteristics of the securities involved, speed of
4 the transaction, execution price, price improvement opportunities,
5 liquidity, and the value of research provided, execution
6 capabilities, commission rate, financial responsibility, and
7 responsiveness of the broker."

Senator Jensen filed the following amendment to LB 1005:
(Amendment, AM2835, is printed separately and available in the Bill Room,
Room 1104.)

Senator Synowiecki filed the following amendment to LB 559:
AM2962

(Amendments to Final Reading copy)

- 1 1. Strike section 5.
- 2 2. On page 1, line 4; and page 39, line 18, strike
- 3 "60-486,".
- 4 3. On page 7, after line 6, insert the following new
- 5 subsection:
- 6 "(7) If a person is not able to legally acquire a social
- 7 security number, such person may present to the department a valid
- 8 United States-based identification as approved by the director in
- 9 lieu of a social security number."
- 10 4. On page 33, strike lines 17 through 28 and insert the
- 11 following new subsection:
- 12 "(5) If a person is not able to legally acquire a social
- 13 security number, such person may present to the Department of Motor
- 14 Vehicles a valid United States-based identification as approved by
- 15 the director in lieu of a social security number."
- 16 5. On page 34, strike lines 1 through 13.
- 17 6. Renumber the remaining sections and correct internal
- 18 references accordingly.

Senator Landis filed the following amendment to LB 1008:
AM2479

(Amendments to Standing Committee amendments, AM2295)

- 1 1. Insert the following new section:
- 2 "Sec. 3. Section 23-114.01, Revised Statutes Supplement,
- 3 2003, is amended to read:
- 4 23-114.01. (1) In order to avail itself of the powers
- 5 conferred by section 23-114, the county board shall appoint a
- 6 planning commission to be known as the county planning commission.
- 7 The members of the commission shall be residents of the county to
- 8 be planned and shall be appointed with due consideration to
- 9 geographical and population factors. Since the primary focus of
- 10 concern and control in county planning and land-use regulatory
- 11 programs is the unincorporated area, a majority of the members of
- 12 the commission shall be residents of unincorporated areas, except
- 13 that this requirement shall not apply to joint planning

14 commissions. Members of the commission shall hold no county or
15 municipal office, except that a member may also be a member of a
16 city, village, or other type of planning commission. The term of
17 each member shall be three years, except that approximately
18 one-third of the members of the first commission shall serve for
19 terms of one year, one-third for terms of two years, and one-third
20 for terms of three years. All members shall hold office until
21 their successors are appointed. Members of the commission may be
22 removed by a majority vote of the county board for inefficiency,
23 neglect of duty, or malfeasance in office or other good and
1 sufficient cause upon written charges being filed with the county
2 board and after a public hearing has been held regarding such
3 charges. Vacancies occurring otherwise than through the expiration
4 of terms shall be filled for the unexpired terms by individuals
5 appointed by the county board. Members of the commission shall be
6 compensated for their actual and necessary expenses incurred in
7 connection with their duties in an amount to be fixed by the county
8 board. Reimbursement for mileage shall be made at the rate
9 provided in section 81-1176. Each county board may provide a per
10 diem payment for members of the commission of not to exceed fifteen
11 dollars for each day that each such member attends meetings of the
12 commission or is engaged in matters concerning the commission, but
13 no member shall receive more than one thousand dollars in any one
14 year. Such per diem payments shall be in addition to and separate
15 from compensation for expenses.

16 (2) The commission: (a) Shall prepare and adopt as its
17 policy statement a comprehensive development plan and such
18 implemental means as a capital improvement program, subdivision
19 regulations, building codes, and a zoning resolution; (b) shall
20 consult with and advise public officials and agencies, public
21 utilities, civic organizations, educational institutions, and
22 citizens relating to the promulgation of implemental programs; (c)
23 may delegate authority to any of the groups named in subdivision
24 (b) of this subsection to conduct studies and make surveys for the
25 commission; and (d) shall make preliminary reports on its findings
26 and hold public hearings before submitting its final reports. The
27 county board shall not hold its public meetings or take action on

1 matters relating to the comprehensive development plan, capital
2 improvements, building codes, subdivision development, or zoning
3 until it has received the recommendations of the commission.

4 (3) The commission may, with the consent of the governing
5 body, in its own name: Make and enter into contracts with public or
6 private bodies; receive contributions, bequests, gifts, or grants
7 of funds from public or private sources; expend the funds
8 appropriated to it by the county board; employ agents and
9 employees; and acquire, hold, and dispose of property. The
10 commission may, on its own authority: Make arrangements consistent
11 with its program; conduct or sponsor special studies or planning
12 work for any public body or appropriate agency; receive grants,

13 remuneration, or reimbursement for such studies or work; and at its
14 public hearings, summon witnesses, administer oaths, and compel the
15 giving of testimony.

16 (4) In all counties in the state, the county planning
17 commission may grant conditional uses or special exceptions to
18 property owners for the use of their property if the county board
19 of commissioners or supervisors has officially and generally
20 authorized the commission to exercise such powers and has approved
21 the standards and procedures the commission adopted for equitably
22 and judiciously granting such conditional uses or special
23 exceptions. The granting of a conditional use permit or special
24 exception shall only allow property owners to put their property to
25 a special use if it is among those uses specifically identified in
26 the county zoning regulations as classifications of uses which may
27 require special conditions or requirements to be met by the owners
1 before a use permit or building permit is authorized. The
2 applicant for a conditional use permit or special exception for a
3 livestock operation specifically identified in the county zoning
4 regulations as a classification of use which may require special
5 conditions or requirements to be met within an area of a county
6 zoned for agricultural use may request a determination of the
7 special conditions or requirements to be imposed by the county
8 planning commission or by the county board of commissioners or
9 supervisors if the board has not authorized the commission to
10 exercise such authority. Upon request the commission or board
11 shall issue such determination of the special conditions or
12 requirements to be imposed in a timely manner. Such special
13 conditions or requirements to be imposed may include, but are not
14 limited to, the submission of information that may be separately
15 provided to state or federal agencies in applying to obtain the
16 applicable state and federal permits. The commission or the board
17 may request and review, prior to making a determination of the
18 special conditions or requirements to be imposed, reasonable
19 information relevant to the conditional use or special exception.
20 If a determination of the special conditions or requirements to be
21 imposed has been made, final permit approval may be withheld
22 subject only to a final review by the commission or county board to
23 determine whether there is a substantial change in the applicant's
24 proposed use of the property upon which the determination was based
25 and that the applicant has met, or will meet, the special
26 conditions or requirements imposed in the determination. For
27 purposes of this section, substantial change shall include any
1 significant alteration in the original application including a
2 significant change in the design or location of buildings or
3 facilities, in waste disposal methods or facilities, or in
4 capacity.

5 (5) The power to grant conditional uses or special
6 exceptions as set forth in subsection (4) of this section shall be
7 the exclusive authority of the commission, except that the county

8 board of commissioners or supervisors may choose to retain for
9 itself the power to grant conditional uses or special exceptions
10 for those classifications of uses specified in the county zoning
11 regulations. The county board of commissioners or supervisors may
12 exercise such power if it has formally adopted standards and
13 procedures for granting such conditional uses or special exceptions
14 in a manner that is equitable and which will promote the public
15 interest. An appeal of a decision by the county planning
16 commission or county board of commissioners or supervisors
17 regarding a conditional use or special exception shall be made to
18 the district court.

19 (6) Whenever a county planning commission or county board
20 is authorized to grant conditional uses or special exceptions
21 pursuant to subsection (4) or (5) of this section, the planning
22 commission or county board shall, with its decision to grant or
23 deny a conditional use permit or special exception, issue a
24 statement of factual findings arising from the record of
25 proceedings that support the granting or denial of the conditional
26 use permit or special exception. If a county planning commission's
27 role is advisory to the county board, the county planning
1 commission shall submit such statement with its recommendation to
2 the county board as to whether to approve or deny a conditional use
3 permit or special exception."

4 2. On page 1, lines 12 through 14, strike the new matter
5 and insert "The board of adjustment shall have no authority to
6 hear and decide appeals regarding conditional use permits or
7 special exceptions which may be granted pursuant to section
8 23-114.01".

9 3. On page 3, lines 11 through 14, strike the new
10 matter; and in line 17 after "23-168.03" insert "; and in line 15
11 after the comma insert 'and section 23-114.01, Revised Statutes
12 Supplement, 2003,'."

13 4. Renumber the remaining sections accordingly.

RESOLUTION

LEGISLATIVE RESOLUTION 254. Introduced by Stuthman, 22.

WHEREAS, the Scotus Central Catholic girls' basketball team is the champion of the 2004 Class C-1 Girls' State Basketball Tournament; and

WHEREAS, the 40-34 win over the talented Norfolk Catholic team in the final game capped the Lady Shamrocks' Girls Class C-1 State Basketball Tournament; and

WHEREAS, this is the fourth state title under the guidance of Scotus coach Sean Wickham; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state which is the result of the individual team members' performance and coaching excellence and the support of teachers, administrators, and parents.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature recognizes and congratulates the Scotus Central Catholic girls' basketball team and Coach Sean Wickham.

2. That a copy of this resolution be sent to Scotus Central Catholic girls' basketball team head coach Sean Wickham.

Laid over.

GENERAL FILE

LEGISLATIVE BILL 868. Title read. Considered.

The Standing Committee amendment, AM2598, found on page 618, was considered.

Senator Stuhr withdrew the Stuhr et al. pending amendment, AM2950, found on page 922.

Senators Stuhr, Raikes, and Redfield offered the following amendment to the Standing Committee amendment:

AM2960

(Amendments to Standing Committee amendments, AM2598)

- 1 1. Strike sections 1 and 2 and insert the following new
- 2 sections:
- 3 "Section 1. Section 79-201, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 79-201. (1) For purposes of this section:
- 6 (a) Prior to July 1, 2005, a child is of mandatory
- 7 attendance age if the child (i) has reached seven years of age,
- 8 (ii) did not reach sixteen years of age prior to the effective date
- 9 of this act, and (iii) has not reached eighteen years of age; and
- 10 (b) On and after July 1, 2005, a child is of mandatory
- 11 attendance age if the child (i) will reach six years of age prior
- 12 to January 1 of the current school year, (ii) did not reach sixteen
- 13 years of age prior to the effective date of this act, and (iii) has
- 14 not reached eighteen years of age.
- 15 (2) Except as provided in ~~section 79-202~~ subsection (3)
- 16 of this section, every person residing in a school district within
- 17 the State of Nebraska who has legal or actual charge or control of
- 18 any child who is not less than seven years of age and not more than
- 19 sixteen years of age or who is younger than seven years of age and
- 20 is of mandatory attendance age or is enrolled in any a public
- 21 school shall cause such child to enroll in, if such child is not
- 22 enrolled, and attend regularly the a public, private,
- 23 denominational, or parochial day schools school which meet meets
- 1 the requirements for legal operation prescribed in Chapter 79 or a
- 2 school which elects pursuant to section 79-1601 not to meet

3 accreditation or approval requirements each day that such schools
4 are school is open and in session, except when excused by school
5 authorities or when illness or severe weather conditions make
6 attendance impossible or impracticable.

7 (3) Subsection (2) of this section does not apply in the
8 case of any child who:

9 (a) Has obtained a high school diploma by meeting the
10 graduation requirements established in section 79-729;

11 (b) Has completed the program of instruction offered by a
12 school which elects pursuant to section 79-1601 not to meet
13 accreditation or approval requirements;

14 (c) Has reached the age of eighteen years;

15 (d) Has reached the age of sixteen years and such child's
16 parent or guardian has signed a notarized waiver on a waiver form
17 provided by the school;

18 (e) Will reach six years of age prior to January 1 of the
19 current school year, but will not reach seven years of age prior to
20 January 1 of the current school year, and such child's parent or
21 guardian has signed an affidavit stating that the child is
22 participating in an education program that the parent or guardian
23 believes will prepare the child to enter grade one for the
24 following school year; or

25 (f) Will not reach six years of age prior to January 1 of
26 the current school year and such child was enrolled in a public
27 school and has discontinued the enrollment according to the policy
1 of the school board adopted pursuant to subsection (4) of section
2 79-214. ~~; unless such child has graduated from high school. Any~~
3 ~~person with legal or actual charge or control of a child younger~~
4 ~~than seven years of age who is enrolled in a public school may~~
5 ~~discontinue the enrollment of such child pursuant to the policy of~~
6 ~~the school board. All school boards shall adopt policies allowing~~
7 ~~discontinuation of the enrollment of students younger than seven~~
8 ~~years of age and specifying the procedures therefor.~~

9 The school term shall be as provided in section 79-211.

10 Sec. 2. Section 79-214, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 79-214. (1) Except as provided in subsection (2) of this
13 section, the school board of any school district shall not admit
14 any child into the kindergarten or beginner grade of any school of
15 such school district unless such child has reached the age of five
16 years or will reach such age on or before October 15 of the current
17 school year for school years prior to school year 2005-06 and
18 before September 1 of the current year for school year 2005-06 and
19 each school year thereafter.

20 (2) The board may admit a child who will reach the age of
21 five ~~between~~ years of age on or after October 16 and on or before
22 February 1 of the current school year for school years prior to
23 school year 2005-06 and on or after September 1 and on or before
24 December 31 of the current school year for school year 2005-06 and

25 each school year thereafter if the parent or guardian requests such
 26 entrance and provides an affidavit stating that (a) the child
 27 attended kindergarten in another jurisdiction in the current school
 1 year, (b) the family anticipates relocation to another jurisdiction
 2 that would allow admission within the current school year, or (c)
 3 the child has demonstrated through ~~recognized~~ assessment procedures
 4 approved by the board that he or she is capable of carrying the
 5 work of kindergarten or the beginner grade.

6 (3) The board shall comply with the requirements of
 7 subsection (2) of section 43-2007 and shall require evidence of a
 8 physical examination by a physician, a physician assistant, or an
 9 advanced practice registered nurse within six months prior to the
 10 entrance of a child into the beginner grade and the seventh grade
 11 or, in the case of a transfer from out of state, to any other grade
 12 of the local school, except that no such physical examination shall
 13 be required of any child whose parent or guardian objects in
 14 writing. The cost of such physical examination shall be borne by
 15 the parent or guardian of each child who is examined.

16 (4) The board shall adopt policies allowing
 17 discontinuation of the enrollment of students who will not reach
 18 six years of age prior to January 1 of the current school year and
 19 specifying the procedures therefor.

20 Sec. 4. The following section is outright repealed:

21 Section 79-202, Reissue Revised Statutes of Nebraska.".

SPEAKER BROMM PRESIDING

SENATOR JANSSEN PRESIDING

Pending.

STANDING COMMITTEE REPORTS **Transportation and Telecommunications**

LEGISLATIVE BILL 1056. Indefinitely postponed.

LEGISLATIVE BILL 1205. Indefinitely postponed.

(Signed) Tom Baker, Chairperson

AMENDMENTS - Print in Journal

Senator Brown filed the following amendment to LR 209CA:
 AM2977

(Amendments to E & R amendments, AM7183)

- 1 1. Insert the following new section:
- 2 "Sec. 2. At the general election in November 2004 the
- 3 following proposed amendment to the Constitution of Nebraska shall
- 4 be submitted to the electors of the State of Nebraska for approval
- 5 or rejection:

6 To amend Article III, section 24:

7 III-24 "(1) Except as provided in this section, the
8 Legislature shall not authorize any game of chance or any lottery
9 or gift enterprise when the consideration for a chance to
10 participate involves the payment of money for the purchase of
11 property, services, or a chance or admission ticket or requires an
12 expenditure of substantial effort or time.

13 (2) The Legislature may authorize and regulate a state
14 lottery pursuant to subsection (3) of this section and other
15 lotteries, raffles, and gift enterprises which are intended solely
16 as business promotions or the proceeds of which are to be used
17 solely for charitable or community betterment purposes without
18 profit to the promoter of such lotteries, raffles, or gift
19 enterprises.

20 (3) The Legislature may establish a lottery to be
21 operated and regulated by the State of Nebraska. The proceeds of
22 the lottery shall be appropriated by the Legislature for the costs
23 of establishing and maintaining the lottery and for other purposes
1 as directed by the Legislature. No lottery game shall be conducted
2 as part of the lottery unless the type of game has been approved by
3 a majority of the members of the Legislature.

4 (4) Nothing in this section shall be construed to
5 prohibit (a) the enactment of laws providing for the licensing and
6 regulation of wagering on the results of horseraces, wherever run,
7 either within or outside of the state, by the parimutuel method,
8 when such wagering is conducted by licensees within a licensed
9 racetrack enclosure or (b) the enactment of laws providing for the
10 licensing and regulation of bingo games conducted by nonprofit
11 associations which have been in existence for a period of five
12 years immediately preceding the application for license, except
13 that bingo games cannot be conducted by agents or lessees of such
14 associations on a percentage basis.

15 (5)(a) For purposes of this subsection, casino gaming
16 includes games of chance played for money, credit, or any
17 representative of value using cards; dice; equipment;
18 player-activated electronic, video, or mechanical gaming devices;
19 and other methods authorized by the Legislature.

20 (b) Nothing in the Constitution of Nebraska shall be
21 construed to prohibit or restrict casino gaming as authorized by
22 the Legislature at up to three casino locations. Subsequent to the
23 initial legislative authorization of any casino location, the
24 voters of the county in which such casino location is authorized
25 shall either approve or disapprove casino gaming in such county.
26 Only the Legislature may provide for the authorization, operation,
27 regulation, and taxation of casino gaming whether casino gaming is
1 authorized under this section or by initiative measure."

2 2. On page 3, line 23, after the first period insert the
3 following new matter: "A constitutional amendment to define casino
4 gaming and to permit the Legislature to authorize up to three

- 5 casino locations subject to approval by voters in the affected
 6 counties and provide for the authorization, operation, regulation,
 7 and taxation of casino gaming.
 8 For
 9 Against".
 10 3. Renumber the remaining section accordingly.

Senator Foley filed the following amendment to LB 1005:
 AM2928

- 1 1. Insert the following new section:
 2 "Sec. 81. Section 71-8611, Reissue Revised Statutes of
 3 Nebraska, is amended to read:
 4 71-8611. For the purpose of providing blind persons with
 5 remunerative employment, enlarging the economic opportunities of
 6 blind persons, and stimulating blind persons to greater efforts in
 7 striving to make themselves self-supporting, the commission shall
 8 administer and operate vending facilities programs pursuant to the
 9 federal Randolph-Sheppard Act, as amended, 20 U.S.C. 107 et seq.
 10 Blind persons licensed by the commission pursuant to its rules and
 11 regulations are authorized to operate vending facilities in any
 12 federally owned building or on any federally owned or controlled
 13 property, in any state-owned building or on any ~~state-owned or~~
 14 ~~controlled~~ property owned or controlled by the state, or on any
 15 property owned or controlled by any county, city, or municipally
 16 owned or controlled property municipality with the approval of the
 17 local governing body, when, in the judgment of the director of the
 18 commission, such vending facilities may be properly and
 19 satisfactorily operated by blind persons. With respect to vending
 20 facilities in any state-owned building or on any property owned or
 21 controlled by the state, priority shall be given to blind persons,
 22 except that this shall not apply to the Game and Parks Commission
 23 or the University of Nebraska. This priority shall only be given
 24 if the bid submitted is comparable in price to the other bids
 1 submitted and the qualifications and capabilities of the vendors
 2 bidding for a contract are found to be similar to the other
 3 bidders."
 4 2. On page 94, line 27, strike "and 71-6735" and insert
 5 "71-6735, and 71-8611".
 6 3. Renumber the remaining sections accordingly.

Senator Quandahl filed the following amendment to LB 155:
 AM2848

- 1 1. Strike the original sections and all amendments
 2 thereto and insert the following new sections:
 3 "Section 1. Section 76-238, Reissue Revised Statutes of
 4 Nebraska, is amended to read:
 5 76-238. (1) All deeds, mortgages, and other instruments
 6 of writing which are required to be or which under the laws of this
 7 state may be recorded, shall take effect and be in force from and

8 after the time of delivering ~~the same~~ such instruments to the
9 register of deeds for recording, and not before, as to all
10 creditors and subsequent purchasers in good faith without notice.
11 All ; and all such deeds, mortgages and other instruments shall be
12 adjudged are void as to all such creditors and subsequent
13 purchasers without notice whose deeds, mortgages, or other
14 instruments ~~shall be first recorded~~ are recorded prior to such
15 instruments. However, ; PROVIDED, that such deeds, mortgages and
16 other instruments shall be are valid between the parties to the
17 instrument.

18 (2) For purposes of this section, possession of
19 agricultural real estate or residential real estate by a party
20 related to the owner of record of the real estate within the third
21 degree of consanguinity or affinity shall not serve as notice to a
22 creditor or subsequent purchaser in any case in which such party is
23 claiming rights in such real estate pursuant to a lease (a) entered
24 into on or after the effective date of this act; (b) purporting to
1 extend beyond a term of one year; and (c) which has not satisfied
2 the requirements of section 76-211, unless the creditor or
3 subsequent purchaser, in advance of recording a deed, mortgage, or
4 other instrument, has received a written copy of such lease.

5 (3) For purposes of this section:

6 (a) Agricultural products includes grain and feed crops;
7 forages and sod crops; and animal production, including breeding,
8 feeding, or grazing of cattle, horses, swine, sheep, goats, bees,
9 or poultry;

10 (b) Agricultural real estate means land which is
11 primarily used for the production of agricultural products,
12 including waste land lying in or adjacent to and in common
13 ownership with land used for the production of agricultural
14 products;

15 (c) Related within the third degree of consanguinity or
16 affinity includes parents, grandparents, great-grandparents,
17 children, grandchildren, great-grandchildren, brothers, sisters,
18 uncles, aunts, nephews, nieces, and spouses of the same and any
19 partnership, limited liability company, or corporation in which all
20 of the partners, members, or shareholders are related within the
21 third degree of consanguinity or affinity; and

22 (d) Residential real estate means real estate containing
23 not more than four units designed for use for residential purposes.
24 A condominium unit that is otherwise residential real estate
25 remains so even though the condominium development contains more
26 than four dwelling units or units for nonresidential purposes.

27 Sec. 2. Original section 76-238, Reissue Revised
1 Statutes of Nebraska, is repealed."

Senator Janssen filed the following amendment to LR 11CA:
AM3031

(Amendments to Final Reading copy)

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:
3 "Section 1. At the general election in November 2004 the
4 following proposed amendment to the Constitution of Nebraska shall
5 be submitted to the electors of the State of Nebraska for approval
6 or rejection:
7 To amend Article III, section 24:
8 III-24 "(1) Except as provided in this section, the
9 Legislature shall not authorize any game of chance or any lottery
10 or gift enterprise when the consideration for a chance to
11 participate involves the payment of money for the purchase of
12 property, services, or a chance or admission ticket or requires an
13 expenditure of substantial effort or time.
14 (2) The Legislature may authorize and regulate a state
15 lottery pursuant to subsection (3) of this section and other
16 lotteries, raffles, and gift enterprises which are intended solely
17 as business promotions or the proceeds of which are to be used
18 solely for charitable or community betterment purposes without
19 profit to the promoter of such lotteries, raffles, or gift
20 enterprises.
21 (3) The Legislature may establish a lottery to be
22 operated and regulated by the State of Nebraska. The proceeds of
23 the lottery shall be appropriated by the Legislature for the costs
24 of establishing and maintaining the lottery and for other purposes
25 as directed by the Legislature. No lottery game shall be conducted
26 as part of the lottery unless the type of game has been approved by
27 a majority of the members of the Legislature.
28 (4) Nothing in this section shall be construed to
29 prohibit (a) the enactment of laws providing for the licensing and
30 regulation of wagering on the results of horseraces, wherever run,
31 either within or outside of the state, by the parimutuel method,
32 when such wagering is conducted by licensees within a licensed
33 racetrack enclosure or (b) the enactment of laws providing for the
34 licensing and regulation of bingo games conducted by nonprofit
35 associations which have been in existence for a period of five
36 years immediately preceding the application for license, except
37 that bingo games cannot be conducted by agents or lessees of such
38 associations on a percentage basis.
39 (5)(a) For purposes of this subsection, casino gaming
40 includes games of chance played for money, credit, or any
41 representative of value using cards; dice; equipment;
42 player-activated electronic, video, or mechanical gaming devices;
43 and other methods authorized by the Legislature.
44 (b) Nothing in the Constitution of Nebraska shall be
45 construed to prohibit or restrict casino gaming as authorized by
46 the Legislature at up to two casino locations. Subsequent to the
47 initial legislative authorization of any casino location, the
48 voters of the county in which such casino location is authorized
49 shall either approve or disapprove casino gaming in such county.

27 Only the Legislature may provide for the authorization, operation,
1 regulation, and taxation of casino gaming whether casino gaming is
2 authorized under this section or by initiative measure.".
3 Sec. 2. The proposed amendment shall be submitted to the
4 electors in the manner prescribed by the Constitution of Nebraska,
5 Article XVI, section 1, with the following ballot language:
6 "A constitutional amendment to define casino gaming and
7 to permit the Legislature to authorize up to two casino
8 locations subject to approval by voters in the affected
9 counties and provide for the authorization, operation,
10 regulation, and taxation of casino gaming.
11 For
12 Against".

Senator Schrock filed the following amendment to LB 916:
AM3030

(Amendments to Standing Committee amendments, AM2826)

- 1 1. On page 6, line 25, strike "an" and insert "a
2 single".

NOTICE OF COMMITTEE HEARING
Transportation and Telecommunications
Room 1113

Monday, March 22, 2004

1:00 p.m.

Roberto Munguia - Nebraska Transit and Rail Advisory Council

(Signed) Tom Baker, Chairperson

UNANIMOUS CONSENT - Add Cointroducer

Senator Synowiecki asked unanimous consent to have his name added as cointroducer to LB 1083. No objections. So ordered.

VISITORS

Visitors to the Chamber were Senator Johnson's daughter and granddaughter, Lynn and Nicole Fleming, from Omaha; and 30 students and sponsors from Leadership Kearney.

ADJOURNMENT

At 4:34 p.m., on a motion by Senator Byars, the Legislature adjourned until 9:00 a.m., Wednesday, March 10, 2004.

Patrick J. O'Donnell
Clerk of the Legislature

